

LCQ6: Regulating franchising-related business practices

Following is a question by Dr the Hon Priscilla Leung and a reply by the Secretary for Commerce and Economic Development, Mr Edward Yau, in the Legislative Council today (March 27):

Question:

It is learnt that more and more operators of chained convenience stores and self-service laundries are expanding their networks of outlets through granting franchise. However, there is currently no dedicated legislation in Hong Kong regulating the powers and responsibilities between a franchisor and a franchisee under a franchise model. Often, only after signing a franchise agreement did the small shop operators find that the provisions in the agreement are quite unfavourable to them, and they are oppressed by the franchisors but have nowhere to turn to for assistance. In this connection, will the Government inform this Council:

(1) whether any government department or public body is currently responsible for regulating franchising-related business practices; if so, of the number of complaints received from franchisees against their franchisors by that department or body in the past three years; if not, the reasons for that;

(2) whether it studied in the past three years ways to enhance the protection for franchisees, such as by amending legislation relating to consumer rights and interests to classify franchisees as consumers; if so, of the outcome; if not, the reasons for that; and

(3) whether it will, upon making reference to the practices of other jurisdictions, explore the enactment of a dedicated legislation or the establishment of a system to regulate franchising-related business practices; if so, of the details and timetable; if not, the reasons for that?

Reply:

President,

Franchising is a model of business expansion. Through entering into franchising agreement, franchisors can rapidly develop, with less investment and risk, a business network with unified brand image and consistent products, while franchisees can immediately benefit from the reputation of franchisors and the support and services in business operation they provide, for example, supply of products, sale and service models, manpower training, marketing, etc.

The franchising market in Hong Kong has been developing steadily, and it is especially common in the food and beverage as well as retail sectors. It

can also be found in other service sectors, such as laundry, mini-storage, and even medical services. Many well-known global franchise brands have a presence in Hong Kong, and there are also home-grown products and services using the franchising model for operation.

In consultation with the Security Bureau and the Department of Justice, my consolidated reply to the three parts of the question is as follows:

Franchising is a business activity, and may involve a number of legal aspects, including contract, intellectual property, provision and sale of products, liability and safety of products, consignment, employment and arrangements for dispute resolution, etc. The co-operation between franchisors and franchisees is a commercial relationship based on the contract agreed between both parties, which is governed by the law of contract, including the common law and applicable legislation, for example the Misrepresentation Ordinance.

If there is a dispute on the co-operation between parties to a contract, the parties may acquire and enforce rights under the contract. If one party fails to fulfil its obligations, the other party may recover damages and resolve their disputes through legal means, such as litigation, arbitration and mediation. If fraud is suspected in the dispute, the Police will also follow up. The current contract law related to franchising in Hong Kong has been functioning effectively. The Government has no plan to introduce dedicated legislation or system to regulate the relevant business activities. Under the principle of respect for freedom of contract, it is not appropriate for the Government to intervene into the commercial operations and disputes between franchisors and franchisees by restricting the substance or format of contracts between parties or imposing specific arrangements for co-operation, etc.

Regarding consumer protection legislation, its main purpose is to protect the legitimate interest of consumers as its name suggests. Franchisees conduct commercial activities. The associated investment and business risks they bear should not and could not be dealt with by consumer protection legislation.

It has been the Government's policy to provide an environment conducive to businesses and render suitable support to various sectors for the development of the trade. The Trade and Industry Department (TID) provides various support services to the small and medium enterprises (SMEs), including the establishment of the Support and Consultation Centre for SMEs (SUCCESS). SUCCESS provides SMEs with information on business operation and consultation services free of charge in collaboration with industrial and trade organisations, professional bodies, private enterprises and other government departments. Through the "Meet-the-Advisors" Business Advisory Service of SUCCESS, SMEs can consult experts on their opinions on various aspects of operating a business, including franchising. The SME Mentorship Programme of SUCCESS enables SME entrepreneurs at the early stages of business development in various industries, including franchising, to learn business techniques from experienced entrepreneurs and professionals in a

one-on-one setting. SUCCESS have also organised seminars on franchising, with speakers highlighting points to note when expanding business through franchising, the general support provided to franchisees, as well as sharing their experience in developing a successful franchise network and exploring important factors for SMEs to consider when choosing to become a franchisee, etc. TID will continue to implement and enhance services in this area.

In addition, to help expand the franchising business and connection among Hong Kong traders, the Hong Kong Trade Development Council launched the Hong Kong International Franchising Show in 2015. The Show is a one-stop platform for companies and individuals interested in introducing or joining franchising brands to look for franchising brands, identify business partners and acquire the keys to franchising operation. During the Show, a series of seminars were hosted by experts and industry representatives from around the world to provide useful information to anyone interested in taking part in franchising by sharing important points to note, legal issues, business concepts, as well as business management relevant to franchising operation.

In conclusion, similar to other modes of business, franchising is governed and protected by the existing law. The Government has no plan to introduce dedicated legislation or regulatory system specific to franchising.